

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
NO: 5:12-CR-20-BR
NO. 5:15-CV-526-BR

BRANDON INGRAM)
)
)
 v.)
) ORDER
 UNITED STATES OF AMERICA)
)

This matter is before the court on the government's motion to dismiss petitioner's initial 28 U.S.C. § 2255 motion, (DE # 130), and petitioner's amended § 2255 motion, (DE # 137).

By way of background, in 2012, a jury convicted petitioner of one count of conspiracy to distribute and possess with intent to distribute 280 grams or more of cocaine base (crack) and a quantity of cocaine, three counts of distribution of cocaine, and one count of distribution of crack; he was found not guilty of using and carrying a firearm during a drug trafficking crime. The court sentenced him to a total term of 360 months imprisonment. Petitioner appealed his conviction and sentence. In 2014, the Fourth Circuit Court of Appeals affirmed. Petitioner then filed a petition for a writ of certiorari, which the Court denied on 6 October 2014.

On 5 October 2015, petitioner timely filed his § 2255 motion, raising ineffective assistance of counsel claims. (DE # 122.) On 15 December 2015, the government filed the instant motion to dismiss. On 1 February 2016, petitioner filed a response in opposition to the motion. (DE # 135.) The government did not file a reply. On 21 June 2016, and pursuant to Standing Order No. 15-SO-02, defense counsel filed a notice of limited appearance as well as an amended § 2255 motion, (DE # 137). The amended motion incorporates by reference

petitioner's initial § 2255 motion and adds a claim based on Johnson v. United States, 135 S. Ct. 2551 (2015).

The filing of this amended motion supersedes the initial motion and therefore moots the government's motion to dismiss.¹ Accordingly, the motion to dismiss is DENIED. The government is DIRECTED to file an answer or other response as appropriate to the amended § 2255 motion within 40 days of the filing of this order.

This 10 August 2016.

A handwritten signature in green ink, appearing to read "W. Earl Britt", is positioned above a horizontal line.

W. Earl Britt
Senior U.S. District Judge

¹ Even if the motion to dismiss was not moot, the court would deny the motion for further development of the record.